



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 15, 2004

Mr. Christopher M. Bertini  
Bertini & Associates, L.L.P.  
P.O. Box 630  
Galveston, Texas 77550

OR2004-5879

Dear Mr. Bertini:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205232.

Voices for Children Galveston County, Inc. (the "Voices for Children"), which you represent, received a request for certain Court Appointed Special Advocates (the "CASA") statistical reports, names and information relating to volunteers, social economic information, alleged abuses against children, communications with judges, meeting minutes, and newsletters. You assert that some of the requested information does not exist.<sup>1</sup> You also assert that you have released some of the requested information, but claim that some of the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, 552.117, 552.137, and 552.138 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>Although you also claim that the requested information may be withheld under section 552.305, this section is not an exception to public disclosure. Rather, this section is a procedural provision permitting an interested third party to submit to the attorney general reasons why requested information should not be released. Gov't Code § 552.305; see Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Thus, Voices for Children may not withhold any of the submitted information under section 552.305. In addition, as you did not submit to this office written comments stating the reasons why sections 552.102, 552.107, 552.111, and 552.138 would allow the information to be withheld, we assume that you no longer assert these exceptions.

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that the submitted information includes information pertaining to employees and officers of Voices for Children. Section 552.022(a)(2) provides that the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are public information and not excepted from required disclosure under the Act unless they are expressly confidential under other law. Section 552.101 is “other law” for purposes of section 552.022; therefore, we will address your claim under section 552.101 with regard to the information.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization’s list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated the following:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization’s members or contributors may have a chilling effect on the organization’s contributors as well as on the organization’s own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). “[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.*

*Bay Area Citizens*, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights, but noted that “the burden must be light.” *Id.* at 376. Quoting the United State Supreme Court’s decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show “a reasonable probability that the compelled disclosure of a party’s contributors’ names will subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.* Such proof may include “specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.” *Id.*

You argue that Voices for Children has, in this instance, made the requisite *prima facie* showing to this office. Considering the representations made to this office, the submitted supporting information, and the totality of the circumstances, we agree that you have made a *prima facie* showing that disclosure of the identities of contributors to Voices for Children

in this instance will burden First Amendment rights of freedom of association. We believe the term "contributor" encompasses the identities of both those individuals and corporations who make financial donations to Voices for Children and volunteers who donate their time and services to Voices for Children. We note that the term "contributor" does not encompass members of the Voices for Children governing board or officers or employees of Voices for Children. *See generally* Gov't Code § 552.022(a)(2). In addition, *Bay Area Citizens* does not make confidential information pertaining to the donations themselves, such as the amount donated or types of donations. *See Bay Area Citizens*, 982 S.W.2d at 376-77 (only the names of contributors were at issue). Therefore, you must withhold the information that identifies contributors under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association.

Section 552.101 also encompasses section 264.610 of the Family Code, which provides that "[t]he attorney general may not disclose information gained through reports, collected case data, or inspections that would identify a person working at or receiving services from a volunteer advocate program." Section 264.610 applies only to information maintained by the attorney general. The information at issue is not maintained by the attorney general for purposes of section 264.610; therefore, none of the information is excepted from release under section 552.101 of the Government Code in conjunction with section 264.610 of the Family Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing the remaining submitted information, we conclude that none of it is confidential under common law privacy; therefore, none of the remaining submitted information may be withheld under section 552.101 on that ground.

You also assert that section 552.117 of the Government Code is applicable to some of the remaining information.<sup>4</sup> Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, you may only withhold information that we have marked under section 552.117 for those current or former officials or employees who timely elected to keep their personal information confidential; you may not withhold information under section 552.117 for any current or former official or employee who did not make a timely election to keep the information confidential.

Finally, you assert that section 552.137 of the Government Code is applicable to personal email addresses in the submitted information. Section 552.137 provides the following:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

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<sup>4</sup>You assert section 552.017 in your brief, but we assume you refer to section 552.117.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

We agree that you must withhold most of the e-mail addresses of members of the public that you have marked under section 552.137, unless these members have affirmatively consented to the release of their e-mail addresses. However, you may not withhold the e-mail address we have marked.

To conclude, (1) the identifying information of contributors to Voices for Children is excepted under section 552.101 of the Government Code in conjunction with the right of association, (2) the marked information regarding an employee's home address and family member status is excepted under section 552.117 of the Government Code if the employee made a timely request to keep that information confidential, and (3) some of the e-mail addresses you marked are excepted under section 552.137 unless their owners consented to their release. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

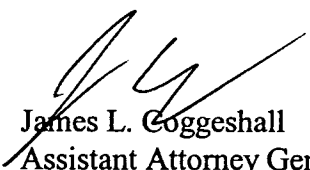
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 205232

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.  
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(w/o enclosures)